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Attorney for Defendant Juan Carlos Ramon

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JUAN CARLOS RAMON,

Defendant

No. 3:17-cr-437-JO

MOTION FOR AMENDMENT OR
REVOCATION OF DETENTION ORDER
WITH SUPPORTING MEMO OF POINTS
AND AUTHORITIES
EXPEDITED HEARING REQUESTED

Defendant Juan Carlos Ramon, by and through his attorney, James F. Halley, moves this court for its order amending or revoking the detention orders entered by the Honorable John V. Acosta on December 7, 2017 and releasing the defendant to the community under appropriate restrictions set forth in 18 USC Sec 3142(c). This is the defendant's second motion for release. The defendant's first motion (CR 16) proposed release to the defendant's parents' home in Pasadena. The Honorable John V. Acosta denied that motion in a hearing held on December 7, 2017. This motion proposes release to a home that the defendant shares with his former significant other.

This motion is supported by 18 U.S.C. §3145(b) and the attached memorandum of points and authorities.

Respectfully submitted January 24, 2018.

JAMES F. HALLEY, P.C.

/s/ James F. Halley

James F. Halley, OSB #911757

Attorney for Defendant Juan Carlos Ramon

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I. REQUEST FOR EXPEDITED HEARING

This is a motion to revoke or amend The Honorable John V. Acosta's order of December 7, 2017 detaining defendant Juan Carlos Ramon without bail pending trial. Mr. Ramon was arrested on November 16, 2017. On November 21, the Honorable Paul Papak ordered defendant Ramon detained. On December 7, 2017 the Honorable John V. Acosta denied defendant's motion seeking his release to his parents' home in Pasadena. Defendant has since been able to make arrangements allowing him to return to a home in Portland he shared with his former significant other, Hailey Foster. Defendant respectfully requests that this motion be set for a hearing at the earliest opportunity.

II. FACTS

Charges and Detention Order.

The indictment accuses defendant Ramon of producing child pornography in violation of 18 U.S.C. §2251. At the detention hearing held on November 21, 2017, the prosecution urged the court to find that there were no conditions that would ensure Mr. Ramon's appearance or the safety of the community. Honorable Paul Papak found that there were no conditions that would ensure the safety of the community, so entered a detention order on that basis.

At the arraignment hearing on December 7, 2017, counsel for defendant asked the court for defendant's release to his parents' home in Pasadena, CA. The Honorable John V. Acosta denied that motion in part on the grounds that supervision from Portland of a defendant in the Los Angeles area presented safety concerns.

Amended Proposed Release Plan.

The defense proposes that Mr. Ramon be released on active GPS monitoring, to his residence in Portland on SE 76th Avenue, Portland, OR 97206¹. Mr. Ramon and Ms. Foster have shared this home for more than a year.

Mr. Ramon will live at this residence with Hailey Marie Foster, his former domestic partner. No children live in the house. The defense proposes the following conditions, and is more than willing to agree to any others that the court finds appropriate:

1. If Ms. Foster determines that she does not want Mr. Ramon living with her, he will move;
2. Ms. Foster will report any pretrial release condition violations to the court;
3. No children live in the home. Mr. Ramon would either:
 - a. Leave the home in the event any children were expected to visit; or
 - b. At the very least, she would not permit unsupervised contact with any children.
4. Mr. Ramon would not have access to the internet connection in the house, or to Ms. Foster's computer, cell phone, or any other internet capable digital device.
5. Ms. Foster would ensure that her computer, phone, and all other digital devices are password protected, and that Mr. Ramon does not have access to the passwords.
6. Ms. Foster would be free to travel and not have an obligation to remain present in the home. In the event that Ms. Foster is going to be absent from the home overnight, the defense would report those absences in advance.

¹ . Consistent with F.R.Crim.P. 49.1, this motion does not identify the address of the house. That information has been shared with the Pretrial Services Office and is known to the prosecution (it is the address where Mr. Ramon was arrested).

7. Mr. Ramon would be subject to active GPS monitoring, and any other condition the court finds appropriate in the circumstances.

III. ARGUMENT.

A. The Law Favors Release.

A person accused of a crime shall be released pending trial except in exceptional circumstances. Prior to the Bail Reform Act of 1984, 18 U.S.C. §§3141-3156 [hereinafter the Act],

federal law ... unequivocally provided that a person arrested for a non-capital offense *shall* be admitted to bail. This traditional right to freedom before conviction permits the unhampered preparation of a defense, and serves to prevent the infliction of punishment prior to conviction.... Unless this right to bail before trial is preserved, the presumption of innocence, secured only after centuries of struggle, would lose its meaning.

Stack v. Boyle, 342 U.S. 1, 4, 96 L.Ed. 3, 72 S.Ct. 1 (1951) (emphasis in original).

While the Act made statutory changes permitting pretrial preventive detention [see *United States v. Salerno*, 481 U.S. 739, 95 L.Ed.2d 697, 107 S.Ct. 2095 (1987)], and established two rebuttable presumptions of flight and danger [18 U.S.C. §3142(e)], it remains the law that "only in rare circumstances should release be denied ... [and] [d]oubts regarding the propriety of release should be resolved in favor of the defendant." *United States v. Motamedi*, 767 F.2d 1403, 1405 (9th Cir. 1985) (citations omitted).

The Act mandates release under the least restrictive condition or combination of conditions that will reasonably assure the appearance of the person as required. *Id.* It provides a three tiered process with an emphasis on "shall release". First, the judicial officer "shall order the pretrial release of the person on personal recognizance or an unsecured appearance bond" unless such release will not assure appearance or will endanger another person or the community. 18 U.S.C. §3142(b). Second, if the accused cannot be released on personal recognizance or unsecured bond, the judicial

officer shall order the pretrial release of the person "subject to conditions listed in subparagraph (c) sufficient to assure appearance and safety." *Id.* §3142(c).

Only if the court finds by clear and convincing evidence that no conditions will reasonably assure safety, or by a preponderance of the evidence that no conditions will assure appearance at trial, may the accused be detained pending trial. *Id.* §3142(f). "The wide range of restrictions available ensures, as Congress intended, that very few defendants will be subject to pretrial detention." *United States v. Orta*, 760 F.2d 887, 890-91 (8th Cir. 1985). When considering a motion for detention or release, "[i]t must be remembered that we are dealing with the deprivation of the liberty of a citizen of the United States who is presumed innocent" [*United States v. Fisher*, 618 F.Supp. 536, 537 (D.C. Pa. 1985), *cert. denied* 479 U.S. 868 (1986)] and that the "Fifth and Eighth Amendments' prohibitions of deprivation of liberty without due process and of excessive bail require careful review of detention orders to ensure the statutory mandate has been respected." *United States v. Motamedi*, 767 F.2d 1403, 1405 (9th Cir. 1985).

Here, Mr. Ramon's proposed release plan ensures both his appearance and the safety of the community. He will be subject to monitoring not only electronically, but also by Ms. Foster when she is present.

IV. CONCLUSION.

For the foregoing reasons, the court should release defendant Ramon subject to the conditions outlined above, and any others the court finds necessary to ensure his appearance and the safety of the community.

Date: January 24, 2018

JAMES F. HALLEY, P.C.

/s/ James F. Halley

James F. Halley

Attorney for Defendant Juan Carlos Ramon